

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re JELMER HOEKSTRA and  
YAZMIN HOEKSTRA

Bank. Case No. 18-16157-BTB

Chapter 7

: Adv. Proc. No.:

MIA HOEKSTRA (formerly known as  
YAZMIN HOEKSTRA),

:

:

:

Plaintiffs,

:

v.

:

:

UNITED STATES DEPARTMENT OF  
EDUCATION and NELNET,

: **COMPLAINT TO DETERMINE**

: **DICHARGEABILITY OF**

: **EDUCATIONAL LOANS**

:

Defendants.

: **11 U.S.C. §523(a)(8)**

:

For this Complaint, the Plaintiff, MIA HOEKSTRA, by undersigned  
counsel, states as follows:

**INTRODUCTION**

Plaintiff and Debtor Mia Hoekstra (hereinafter “Plaintiff” or “Mia”) presents this Complaint to Determine Dischargeability of Educational Loan against United States Department of Education, and Nelnet (hereinafter collectively “Defendants”) pursuant to 11 U.S.C. §523 (a) (8) for those education debts scheduled in the above-entitled Chapter 7 Bankruptcy Case.

**PARTIES**

FREEDOM LAW FIRM, LLC

1           1.     Mia Hoekstra is an individual and the Debtor in the Chapter 7  
2 Bankruptcy Case filed in the District of Nevada bearing case number 18-  
3 16157. Plaintiff can be served with process via mail sent to her attorney of  
4 record, George Haines, Esq., Freedom Law Firm, LLC., 8985 South Eastern  
5 Ave., Suite 350, Las Vegas, NV 89123.  
6

7           2.     Defendant United States Department of Education is a  
8 Department of the Executive Branch of the Federal Government of the  
9 United States of America and can be served with process via mail sent to:  
10 400 Maryland Avenue SW, Room 6E353, Washington, D.C. 20202.  
11 Defendant United States Department of Education can also be served with  
12 process via mail to the US Attorney General, 950 Pennsylvania Avenue NW,  
13 Washington, D.C. 20530-0001, and through the Office of the United States  
14 Attorney, United States Department of Justice, 950 Pennsylvania Avenue  
15 NW, Room 2242, Washington, D.C., 20530-0001.  
16

17           3.     Defendant Nelnet can be served with process via mail sent to:  
18 Nelnet, Attn: Claims, P.O. Box 82505, Lincoln, NE 68501-2505.  
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**JURISDICTION AND VENUE**

4. This adversary proceeding is one arising in the Plaintiff's bankruptcy case bearing case number 18-16157 currently pending before this Court and arising under Chapter 7 of Title 11 of the United States Code.

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334.

6. This is a core proceeding as defined in 28 U.S.C. § 157(b).

7. This Complaint is brought pursuant to 11 U.S.C. § 523(a)(8).

8. Venue properly lies in this judicial district pursuant to 28 U.S.C. §1409(a) as the present adversary proceeding is related to and arising from Plaintiff's Chapter 7 Bankruptcy Case arising under Title 11 of the United States Code which is currently pending before this Court.

**BACKGROUND OF THE PROBLEM**

9. The federal student loan program was originally designed in response to Sputnik. After the successful launch of the Soviet rocket, the U.S. government became worried that the Russians were outpacing Americans in science and math education. In order to make Americans more competitive in the space race, the government authorized the creation of the National Defense Education Act in 1958 and the Guaranteed Student Loan Program (now the Stafford Loan) in 1965.

1           10. Even by the 1970s, few students needed loans to go to college.  
2           The average cost of tuition was only \$2,587, and the average debt for a  
3           medical student was only \$13,469. With Pell grants, scholarships, and  
4           summer jobs, even kids from lower-income backgrounds could often make it  
5           through college debt free. But, largely in response to anecdotal evidence  
6           about a few dishonest lawyers filing for bankruptcy immediately after  
7           graduation, Congress made student loans presumptively non-dischargeable  
8           in bankruptcy for the first five years of repayment, unless excepting such  
9           discharge would impose an “undue hardship” on the debtor or her  
10          dependents. Although this rule was at odds with the fundamental purpose of  
11          the bankruptcy code, it was perhaps a reasonable exception as it only applied  
12          to the first five years of repayment.

15          11. Congress did not define “undue hardship” in 1978, but instead  
16          left that determination to the courts. Over the next thirty years, courts  
17          wrestled with the meaning of “undue hardship,” creating and discarding  
18          nearly a dozen tests. Over time, two tests have emerged triumphant from the  
19          cauldron of judicial lawmaking: the Brunner Test (“Brunner”) and the  
20          Totality of the Circumstances Test (“TOC”). These two tests are  
21          supplemented with wide disagreement over whether courts are permitted to  
22          discharge one of several loans, a practice known as “partial discharge.”  
23  
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1           12. After Brunner and TOC had codified the meaning of “undue  
2 hardship,” Congress amended section 523(a)(8) in two chief ways: (1)  
3 abolishing the five year time frame and making student loans non-  
4 dischargeable in perpetuity; and (2) adding subsection 523(a)(8)(B) which  
5 excepted from discharge qualified private student loans. The problem with  
6 these amendments is that the “undue hardship” standards were created when  
7 courts were only charged with determining whether repayment of federally  
8 insured loans with capped interest rates during the first five years would  
9 constitute an undue hardship. Both Brunner and the Totality of the  
10 Circumstances tests are therefore incredibly harsh because courts knew that  
11 after five years, the debt could be discharged without any showing of  
12 additional financial strain whatsoever.

15           13. In addition to considering this case under the Brunner/TOC test,  
16 as it is binding precedent in this Circuit, Plaintiff humbly prays that this  
17 Court reconsider the applicability of that precedent given the changing legal  
18 landscape of section 523(a)(8) since the time Brunner/TOC was enacted.

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**RELEVANT FACTS**

14. Defendants filed proof of claim no. 3 in Plaintiff's case totaling \$189,327.14. It appears the current interest rate is approximately 6.875%.

15. Plaintiff has one son, Arjan Hoekstra, who is three-years old and she is currently pregnant and schedule to give birth to her second in October 2020.

16. Arjan was born with a large genetic deletion. There is no name for his deletion because no one else in the medical literature has ever had a deletion in the same location with the exact same genes or number of genes missing. His deletion is referred to by location: 20p13p12.1 and his medical records list the 64 missing genes. One of those 64 missing genes is JAG 1. When JAG 1 is missing or mutated, it results in a genetic condition called Alagille Syndrome which is primarily a congenital liver disease, it can however affect every system in the body.

17. Alagille Syndrome prevalence is 1 in 70,000, but there is no prevalence number for the 20p13p12.1 deletion Arjan has because no one else is currently living with it. There is one case reported in Canada where the child had a large deletion in the same location as Arjan but it

1 encompassed a different number of genes. The child never left the hospital  
2 and passed away at 3 months old.

3  
4 18. Arjan is fed through a feeding tube (g-tube) which is inserted  
5 through a stoma in the stomach. If the g-tube comes out it must be placed  
6 back in within 30 minutes or the stoma will close and he'll need emergency  
7 surgery to re-insert it. If the tube is inserted incorrectly (outside of the  
8 stomach), and Arjan is fed, it would be fatal. Whoever reinserts the tube  
9 needs to know how to do it properly and how to check that it has been  
10 inserted correctly. The g-tube must be changed out every three months and  
11 requires proper care to prevent granulation and infection. If granulation  
12 occurs and does not subside with medication Arjan would need surgery to  
13 remove it.  
14

15 19. Arjan needs to be on a high calorie diet because of his Alagille  
16 Syndrome. He has severe sensory issues and low muscle tone which have  
17 made it impossible for him to eat through his mouth without throwing up,  
18 gagging or choking. He takes anti-reflux medication three times per day. He  
19 is fed three times during the day and he is also fed at night for 7-10 hours  
20 while sleeping. While he sleeps he is fed through a pump. There is a camera  
21 on him at all times while he sleeps in case he gets wrapped up in the cords or  
22 throws up.  
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1           20. It is very likely Arjan will never have the ability to move like a  
2 typical child. Although he has started walking, he does not walk like a  
3 typical child due to a small deformity in his legs. He wears SMOs for  
4 assistance and sometimes uses a walker. He may need a wheelchair for  
5 longer distances once he starts school. His low-muscle tone also puts him at  
6 a higher risk for falls when he is tired or sick. Amongst the 64 missing genes  
7 is BMP2, which is involved in the creation and maintenance of healthy  
8 bones. The consequences of having this deletion as he grows is unknown.

9  
10           21. Arjan uses words and modified sign language to communicate.  
11 His receptive language skills are intact. However, his expressive language is  
12 mildly to moderately delayed. He sometimes uses augmentative and  
13 alternative communication.

14  
15           22. Overall, Arjan's trajectory is completely unknown and that will  
16 never change. Also, the level of care he requires is extraordinary and that  
17 will also never change. He is currently followed by eight (8) specialties:  
18 neurology, ophthalmology, cardiology, pulmonology, nephrology,  
19 gastroenterology, endocrinology, and an orthopedic surgeon. He also sees an  
20 orthotist and prior to COVID-19 was attending physical therapy twice per  
21 week, occupational therapy once per week and speech therapy once per  
22 week. His health requires constant supervision. He must get blood draws  
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1 periodically to check his liver, kidney and thyroid function. He also gets  
2 scans of those organs and a yearly brain MRI/MRA to check for blood  
3 vessel narrowing which is something that can happen with Alagille  
4 syndrome.

5  
6 23. In the future, Arjan may need to see a neurosurgeon and an ear,  
7 nose and throat specialist due to a cyst that was recently discovered in one of  
8 the cavities in his skull. Arjan also has pulmonary stenosis, which has to be  
9 closely-monitored through echocardiograms and EKGs. If the condition  
10 worsens, he will need heart surgery.

11  
12 24. Additionally, Arjan has hypothyroid. He takes medication for it  
13 daily and gets blood draws every three months to monitor his TSH, T4 and  
14 T3 levels. He suffers from thyroid hormone resistance.

15  
16 25. If Arjan gets a cold it can quickly escalate to respiratory distress  
17 he therefore has oxygen, a suction machine, and several medications at home  
18 to prevent him from having to be admitted to pediatric intensive care unit.  
19 He also takes medication to help him breathe at night. Arjan suffers from  
20 febrile seizures. In case of a prolonged febrile seizure, a rescue medication  
21 must be administered immediately to treat the seizure.

22  
23 26. Arjan will never be able to grow and develop as a “normal”  
24 child. He will require his mother’s care and attention for the rest of his life.

1           27. Mia will never be able to return to work. Mia's full-time job  
2 will be raising and caring for Arjan. The cost of retaining full-time care for  
3 Arjan far outweighs the income that Mia would expect to make if she  
4 returned to the workforce.

5  
6           28. Mia is currently unable to maintain a minimal standard of  
7 living. She currently receives no income and Mia does not anticipate  
8 receiving any income in the future.

9           29. Mia's husband, Jelmer Hoekstra, is currently unemployed and  
10 they are currently using his 401k to pay their living expenses.

11           30. Without this 401k money, they would be unable to feed, shelter,  
12 and cloth themselves and their 2-sons.

13  
14           31. Mia has no additional funds to allocate to the repayment of the  
15 student loans. Her income is below the federal poverty level set forth in 42  
16 U.S.C. § 9902.

17           32. Mia is currently in an Income Based Repayment Program  
18 paying \$0 per month.

19  
20           33. Mia and her husband currently own a home is worth  
21 approximately \$372,504.00. They believe they owe over \$286,000 and they  
22 can no longer afford to pay their mortgage. They have also surrendered their  
23 2018 Chevy Colorado and 2015 Mini Cooper because they were no longer  
24

1 able to afford the payments on these vehicles.

2 34. Mia has no other significant assets. Jelmer owns some licensed  
3 software with minimal value.

4 35. Although Mia is fairly-young, 36-years old, it is highly  
5 unlikely that she will ever find gainful employment because taking care of  
6 Arjan will continue to be her full-time job.

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8 **CAUSE OF ACTION**

9 **(Dischargeability against Defendants pursuant to 11 U.S.C. §523(a)(8))**

10 36. Plaintiff hereby incorporates all allegations contained in  
11 paragraphs 1 through 35 above as fully stated herein.

12 37. Pursuant to 11 U.S.C §523(a)(8), the Court shall not discharge a  
13 student loan unless” ...excepting such debt from discharge under this  
14 paragraph would impose an undue hardship on the debtor and the debtor’s  
15 dependents....”

16 38. In the present case, Mia is unable to maintain a minimal  
17 standard of living, has marginal income, and no prospects that her situation  
18 will ever change due to Arjan’s rare genetic disorder.

19 39. Further, the amount of debts in question is far beyond any  
20 amount Mia can realistically repay. As set forth above, the current balance  
21 of the student loans exceed \$180,327.14 and the current interest rate is  
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1 6.875%. Mia would have minimally payments of at least \$1,384.58 per  
2 month for the next 20 years.

3 40. Mia's current and future income is \$0 per month.

4 41. For these reasons, the debts in question should be discharged as  
5 repayment is impossible and would constitute an undue hardship pursuant to  
6 11 U.S.C §523(a)(8).  
7

8 **CLAIMS FOR RELIEF**

9 **A. Count One: Determination of Dischargeability**

10 42. Mia re-alleges and incorporates by reference all of the  
11 allegations contained in all of the preceding paragraphs.

12 43. Plaintiff is entitled to either a complete or partial discharge of  
13 her student loan debt because repayment would constitute an "undue  
14 hardship" on her.  
15

16 44. Mia meets the standards for undue hardship as articulated in  
17 *Brunner/Totality of the Circumstances*.

18 45. Accordingly, Plaintiff prays this Court discharge her student  
19 debt in part or in total.  
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**PRAYER**

46. In light of the foregoing, Plaintiff requests that Defendants be cited to appear and judgment be entered against Defendants for:

- (1) declaratory and injunctive relief;
- (2) determination of dischargeability; and
- (3) other such relief as the Court deems just and proper.

Dated: August 15, 2020

Respectfully submitted,  
By:/s/George Haines, Esq.  
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